

**RECEIVED
CENTRAL FAX CENTER****SEP 30 2010**Application No. 10/802,906
Amendment dated September 30, 2010
Reply to Final Office Action of October 2, 2009**REMARKS**

Applicant amended independent claims 7, 42, and 47 to further define Applicant's claimed invention.

I. Summary of the interview conducted August 26, 2010.

Applicant thanks the Examiner for the courtesy extended during the interview with Applicant's representative on August 26, 2010. During the interview, Applicant's representative and the Examiner agreed that the proposed amendments to independent claim 7 provided at the interview (and incorporated into the claims in this Amendment) overcome the rejections of record.

II. Remarks in response to the Office Action of October 2, 2009.**A. Rejections under 35 U.S.C. § 102(b).**

In the Office Action dated October 2, 2009 ("Office Action"), the Examiner rejected claims 7-10, 13-16, 18-29, 35, 38-42, and 44-51 (including independent claims 7, 42, and 47) under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,825,329 to Caesar ("Caesar"); and rejected claims 7-29, 35 and 38-41 (including independent claim 7) under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,488,543 to Tornier ("Tornier"). According to MPEP § 706.02 Part V, "for anticipation under 35 U.S.C. 102, the [prior art] reference must teach every aspect of the claimed invention either explicitly or impliedly." As discussed below, Applicant submits that Caesar does not teach every aspect of independent claims 7, 42, and 47, and that Tornier does not teach every aspect of independent claim 7.

(1) Rejection of independent claims 7, 42, and 47 based on Caesar.

As amended, each of independent claims 7, 42, and 47 distinguishes over Caesar. Amended independent claim 7 recites that the locking element is provided "on said screw receiving side of said body"; amended independent claim 42 recites that the locking element is provided "on said screw receiving side of said body"; and independent claim 47 recites that the locking element is provided "on said second surface of said body," where the second surface is "opposite said bone-contacting

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surface." Applicant submits that Caesar does not teach or suggest the locking element recited in amended independent claims 7, 42, and 47. Accordingly, amended independent claims 7, 42, and 47 are patentable over the rejection under 35 U.S.C. § 102(b) based on Caesar.

(2) Rejection of independent claim 7 based on Tornier.

Amended independent claim 7 also distinguishes over Tornier. As amended, independent claim 7 also recites that the locking element is "rotatable in a plane substantially perpendicular to said central longitudinal axes of said bone screw receiving holes." Applicant submits that Tornier does not teach or suggest the locking element recited in amended independent claim 7, and, accordingly, amended independent claim 7 is patentable over the rejection under 35 U.S.C. § 102(b) based on Tornier.

B. Rejections under 35 U.S.C. § 103(a).

Additionally, the Examiner rejected claims 30-34, 36, and 37 under 35 U.S.C. § 103(a) as being unpatentable over Caesar; and rejected claims 30-34, 36, and 37 under 35 U.S.C. § 103(a) as being unpatentable over Tornier. In response, Applicant submits that the rejections of claims 30-34, 36, and 37 are rendered moot at least because these claims depend from an allowable independent claim, or claims dependent therefrom.

C. Rejections based on nonstatutory obviousness-type double patenting.

The Examiner rejected claims 7-42 and 44-51 (including independent claims 7, 42, and 47) under the judicially created doctrine of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-173 of U.S. Patent No. 6,193,721; claims 1-39 of U.S. Patent No. 6,936,051; and claims 1-117 of U.S. Patent No. 6,398,783; in view of U.S. Patent No. 5,468,242 to Reisberg ("Reisberg"). Additionally, claims 7-42 and 44-51 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims

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1-72 of copending Application 10/926,734 and claims 1-62 of copending Application No. 11/128,556; in view of Reisberg. Applicant notes that Application Nos. 10/926,734 and 11/128,556 have issued as U.S. Patent Nos. 7,803,157 and 7,704,250, respectively. Applicant acknowledges the above-listed nonstatutory obviousness-type double patenting rejections. However, Applicant submits that U.S. Patent Nos. 6,193,721, 6,936,051, and 6,398,783 are currently not commonly owned with the present application. Normally, the most expedient way to overcome nonstatutory obvious-type double patenting rejections would be with use of a terminal disclaimer. However, given that the present application is not currently commonly owned with U.S. Patent Nos. 6,193,721, 6,936,051, and 6,398,783, the submission of a terminal disclaimer with regard to these patents currently is not possible. Thus, Applicant respectfully requests that the above-listed nonstatutory obviousness-type double patenting rejections be held in abeyance until the pending claims are otherwise found allowable. In the meantime, Applicant will investigate the options for securing ownership of U.S. Patent Nos. 6,193,721, 6,936,051, and 6,398,783 to facilitate the filing a terminal disclaimer to obviate the nonstatutory obviousness-type double patenting rejections associated therewith.

III. Conclusion.

Applicant submits that independent claims 7, 42, and 47 are patentable and that dependent claims 8-41, 44-46, and 48-51 dependent from independent claim 7, 42, or 47, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

Entry and consideration of this Amendment prior to the further examination of the above-identified application is respectfully requested.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including

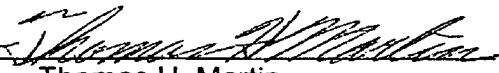
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any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: September 30, 2010

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